

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ERIC THOMAN, individually and on behalf
of all others similarly situated,

Plaintiff,
-against-

StudentUniverse.com Inc.,

Defendant.

Civil Action No. 1:20-cv-11326-WGY

ORAL ARGUMENT REQUESTED

DEFENDANT'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1) an (6) and for the reasons more fully set forth in the accompanying memorandum of law and declarations of Chad Mooney and Mark Imrie, defendant StudentUniverse.com Inc. hereby moves to dismiss all claims of the complaint. The Court lacks subject matter jurisdiction of the proposed class action because the plaintiff cannot establish a threshold amount in controversy of \$5 million as required by the Class Action Fairness Act in cases such as this one based solely on diversity of citizenship. Furthermore, all claims fail on the merits because the StudentUniverse website fully disclosed, and the plaintiff affirmatively agreed to, the cancellation fee that he now asserts constituted conversion, unjust enrichment, and a violation of Connecticut's and other states' unfair and deceptive practices laws. In addition, independent of those disclosures and that agreement, the conversion count fails on the further ground that the tort of conversion does not apply to claims that the defendant has failed to refund monies that were lawfully in its possession.

Dated: August 20, 2020

Respectfully submitted,

StudentUniverse.com, Inc.

By its attorney,

/s/ John A. Shope

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CERTIFICATE OF RULE 7.1 CONFERENCE

Pursuant to Local Rule 7.1(a)(2), I certify that on various dates in August I conferred with plaintiff's counsel in a good faith attempt to resolve or narrow the issues raised in the foregoing motion. While plaintiff's counsel indicated openness to reviewing financial data, she did not agree to withdraw the action. Plaintiff's counsel also did not agree that the claim is barred on the merits.

/s/ John A. Shope

John A. Shope

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of August, 2020, a true and correct copy of the foregoing document has been served on counsel of record who are deemed to have consented to electronic service via ECF.

/s/ John A. Shope

John A. Shope